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DEC - 9 1999

FITZPATRICK, CELLA, HARPER
& SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801

In re Application of
Aaron FENSTER et al.
Application No.: 09/180,629
PCT No.: PCT/CA98/00247
International Filing Date: 20 March 1998
Priority Date: 21 March 1997
For: THREE-DIMENSIONAL IMAGING
SYSTEM

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: DECISION ON
:
: PETITION
:
: UNDER 37 CFR 1.47(a)
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This is a decision in response to the declaration and petition filed under 37 CFR 1.47(a) on 12 November 1999, to accept the application without the signature of co-inventor Shane Dunne.

BACKGROUND

On 20 March 1998, applicants filed international application PCT/CA98/00247, which claimed priority of earlier United States application 60/041,345, filed 21 March 1997. A copy of the international application was communicated to the United States Patent and Trademark Office.

On 13 November 1998, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the requisite basic national fee as required under 35 U.S.C. 371(c)(1).

On 26 October 1999, the United States Designated/Elected Office mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US) (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) and the surcharge under

37 CFR 1.492(e) for filing of the oath or declaration later than twenty months from the priority date were required. The Notification set a ONE (1) MONTH period for response.

On 12 November 1999, applicants submitted a RESPONSE TO MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US). The response included a declaration signed by each inventor except Shane Dunne, the fee under 37 CFR 1.492(e), a petition under 37 CFR 1.47(a), the required petition fee, and a declaration of Richard Bauer, applicants' representative, concluding that Shane Dunne could not be found or reached and giving Mr. Dunne's last known address.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(I), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

The petition lacks item (2) above. MPEP 409.03(d) requires copies of documentary evidence that support a finding that the non-signing inventor cannot be reached be made part of the affidavit or declaration. The declaration refers to e-mails sent to every Shane Dunne found in a web search and indicates that each such inquiry was returned to Mr. Bauer's mail server with a notation that no such addressee existed at the address. No documentary evidence (such as copies of the returned e-mails) has been provided to support this event. Additionally, the statement of facts in the petition indicates that the letter mailed 26 May 1999 was returned by the carrier, DHL, with an indication that the letter was not deliverable and that no forwarding address exists. Documentary evidence (such as a copy of the returned mail label which indicates it as undeliverable) has not been provided.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.47(a) is **DISMISSED**.

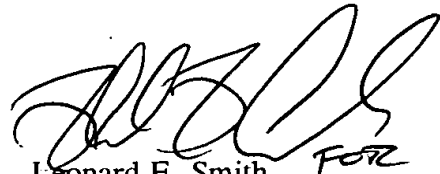
If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any request for reconsideration

should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C., 20231, with the contents of this letter marked to the attention of the PCT Legal Office.



Michael A. Neas
Legal Detailee
PCT Legal Office



Leonard E. Smith
PCT Legal Examiner
PCT Legal Office

Telephone: (703) 308-1315
Facsimile: (703) 308-6459